

**Non-CAMP Enforcement  
Meeting Minutes  
7/14/00**

The Charge:

How can enforcement of child support throughout California become:

(1) consistent; (2) accurate; (3) reliable; and (4) efficient?

Quote

"It is one thing to say that evolving legal doctrine should be informed by the moral norms of society, and quite another for a judge to rule for one litigant or another on the basis of subjectively held and ideologically motivated notions of fairness. However abstractly attractive such a model of Solomonic justice may at first appear, it eventually becomes the dreaded "rule of men," not of law."

Gideon Kanner [professor emeritus from Loyola Law Scholl] quoted in  
the Los Angeles Times Newspaper Oct. 17, 1999

The Questions we ask ourselves:

What should the policy of the state of California be as to each of the enforcement tools available for collection of child support? Let us analyze remedies and tools now available and seek those that will give uniformity. Let us prevent duplication wherever possible. What does present legislation require? What tools are currently available for collection of support in California? What are the variations between counties in the application of enforcement tools? How are enforcement decisions made in the local offices? What role does the court play in the enforcement process? What role does the Franchise Tax Board play in the enforcement of child support orders currently and how will that role change in the future?

What legislation may be suggested to make child support collection more consistent, accurate, reliable and efficient?

Action Item:

Although not discussed here, the committee feels that it is very important that time and effort be given to consideration of the important topic of location of the Respondent as there are many cases whether the home address or work address of the obligor is unknown, and tools may be created to aid in the finding of the Respondent.

Enforcement tools for cases where  
only child support is due:

Abstracts of Judgment

Currently abstracts of judgment are recorded in all known realty in counties where the obligor, the custodial parent, and the obligor's parents reside, as well as where evidence indicates other property may exist. This seems to take place more readily in counties who have had the financial resources to automate their systems, as abstracts of judgment require preparation of the one-page document. In counties where automation has not taken place, it seems that more counties record the actual judgments, themselves.

In either event, the committee recommends that the procedure be modified. It is cumbersome to have to record documents in many counties. Let us create a single statewide lien in a central agency. Recommendation: New legislation

Credit Reporting

Currently reporting of the obligation is made to three private credit agencies: (1) Equivax, (2) Experian, and (3) Transunion. Such reporting is useful, brings good results, and should not be modified.

Disability cases

Abstract of Judgments are filed on up to twenty five per cent (25%) of state disability payments for all cases with more than \$100 in arrears through the California Disability Insurance Program. Such reporting is useful, brings good results, and should not be modified.

#### Unemployment cases

Abstract of Judgments are filed on up to twenty five per cent (25%) of unemployment insurance payments for all cases with more than \$100 in arrears through the California Unemployment Insurance Program. Such reporting is useful, brings good results, and should not be modified.

#### Monthly Billing Statements

It would seem that although annual statements are required [by federal regulations?] to forward to the obligors, there is no monthly billing statements required. Such mailing would create a vehicle to identify possible errors in billing quickly, and is recommended. The cost of such mailing must be considered, however, a positive benefit in public relations would develop. In addition, obligors will be consistently reminded of the growth of arrears due to interest, should an arrearage develop.

#### Wage Assignments

Wage assignments are issued for cases with known employers. It would seem that although wage assignments are required [by federal regulations] to commence upon creation of the court order, two major difficulties arise: (1) the difficulty of the collecting agency to follow an obligor who often switches employers, and (2) the desire of a court to NOT make a wage assignment to a person with a long record of prompt and accurate payments, where an employer indicates a negative reaction towards such an assignment.

The committee recommends that the procedure be modified. A better system might be created by a single document to be completed by the obligor upon his becoming employed. Like a W-4 form created by the employer, the employee would have to indicate the existence of the

support obligation, the location where payment should be made, and the sum due. The burden of creation thus shifts from the collecting agency to the obligor. Recommendation: New legislation

Further, a better system might be created by the requirement of all persons who do not wish for a wage assignment, for them to complete a direct withdrawal for support electronic fund transfer from their bank. That is, the obligor would have to complete instructions to his bank to monthly forward the appropriate sums to the collecting agency, indicating the obligation, the location where payment should be made, and the sum due. Recommendation: New legislation

#### Self employed persons

A payment instruction letter is sent to all self-employed non-custodial parents indicating that the case is reviewed each ninety days. The committee recommends that the procedure be modified by an addition. A better system might be created by the requirement of all self-employed persons to complete a direct withdrawal for support electronic fund transfer from their bank. That is, the obligor would have to complete instructions to his bank to monthly forward the appropriate sums to the collecting agency, indicating the obligation, the location where payment should be made, and the sum due. Recommendation: New legislation

#### Medical Insurance Coverage

There is a requirement that obligors maintain medical insurance if available at low or nominal cost where the child has received aid, if such insurance has been requested, or where the child is medically needy. There seems no vehicle presently existing to verify that such insurance is being maintained. Where coverage by insurance is unknown, prompt claims cannot be made. Recommendation: New legislation

#### Payments through a central agency

It is understood that statewide collection of child support shall be handled in one office, and it must be recognized that this process will create some delay in the families getting actual receipt of due sums. That is, when

a Los Angeles obligor mails the check in Los Angeles to the Los Angeles office, the recipient may expect to receive the sums due within two days. If the check is mailed to a central-state city, further delay will result.  
Recommendation: creation of a vehicle for electronic fund transfers, where possible.

#### Notices to Obligor

Notices are now sent annually to advise the obligor that there is a mandatory review of the case (each 36 months?) and that modification of the court orders may be sought upon a change of circumstances. As the office of the court facilitator is yet new, it would be useful to give notice of the availability of this office to obligors. Recommendation: that a statewide brochure be created, defining the duties of the court facilitator, and that this be forwarded to the obligors.

#### Action Item:

The committee feels that it is very important that time and effort be given to consideration of the definition of a "dead beat obligor". Should some enforcement tools be utilized when the Respondent is only one month in arrears, and others commence upon further arrears existing? Should the definition relate to the sum due, or the number of months where no or low payment is received? Should the definition relate to type of debt, that is, should an obligor who owes sums for outstanding (1) foster care, (2) medical reimbursement, or (3) welfare arrears be treated differently than an obligor who owes child support?

Enforcement tools for cases where  
only arrears are due:

As to each enforcement tool, let us ask:

What Mandated Actions are available?  
What Administrative Actions are available?  
What Judicial Actions are available?

#### Discussion Items

## Administrative Actions

dunning letters/ predictive dialing

Monthly Billing

## Interest

Interest is mandatory, and is not within the discretion of the court. See IRMO Popenhager (1979) 99 CA3d 514. See also IRMO Hoffee (1976) 60 CA3d 337 and Howard v. Howard (1956) 142 CA2d 222. Accrued arrearages are treated like a money judgment. See: IRMO Everett (1990) 220 Cal.App.3d 846. The court has no power to disregard the law on interest. See IRMO Perez (1995) 35 CA4th 77.

## Penalties

### Penalties for Unpaid Child Support

#### 1. [§0.56.0.11.10] Statutory authority

Any support installment that was due on or after January 1, 1992, and remains unpaid for more than 30 days after the recipient files and sends a delinquency notice incurs a penalty of up to 6% of the delinquent payment for each month that it remains unpaid, up to a maximum of 72% of the original arrearage. Fam C §§4721 and 4722 (formerly CC §4700.11 and §4700.11(a)).

#### a. [§0.56.0.11.15] Penalties apply only in egregious cases and never to wage assignments

Fam C §4721 contains a statement of legislative intent that penalties should apply only to "egregious instances" of noncompliance, and that, for purposes of determining the application of penalties, child-support payments made by wage assignment (see §0.56.0.1 et seq.) are timely no

matter when the obligee or the district attorney receives them.

### Support Withholding Order

A support withholding order is an earnings-withholding order based on a writ of execution issued to collect support arrearages. The form used for an earnings-withholding order may also be used for a support withholding order, but the order must indicate on its face that it is for support. CCP §706.030(a).

CCP §706.030 provides a procedure for the DA to issue a support withholding order on a notice of levy per W&I C §11350.7 (see §0.64.2.2.8); support obligors may request an administrative review to reconsider or modify the amount withheld for arrearages, as well as a judicial determination of arrearages. (Note that CCP §706.030 has not yet been updated to reflect the legislative changes effective January 1, 2000, under which local child-support agencies will be taking over support-enforcement responsibilities from DA's offices, and W&I C §11350.7 was repealed and replaced by Fam C §17522; see §§0.64.1 and 0.64.2.2.8.)

The statute also provides that an employer who willfully fails to comply with a support withholding order is liable to the support recipient for any amount not withheld. Employers must send the withheld earnings to the levying officer (or, once it is operational, to the Child Support Centralized Collection and Distribution Unit) within the time required by federal law. Money that is withheld under a support withholding order is to be credited toward satisfaction of a support judgment according to the formula in CCP §695.221. CCP §706.030(c).

### Finding Respondent

Unemp Ins C §1088.5 requires employers (defined to include labor union hiring halls) to furnish the Employment Development Department (EDD) with specified information on new employees within 20 days of hiring them, if they will be working in the state and the employer expects to pay them wages. The requirement does not apply, however, to federal departments or agencies, or to employees of state agencies who perform certain intelligence functions. Employers may comply by submitting a copy of the employee's W-4 form or other hiring document by mail or magnetic or electronic means; those who transmit their reports

magnetically or electronically must do so twice a month at specified intervals, and may, if they have employees in two or more states, send the reports to one designated state. Failure to submit a report without good cause will result in a fine of \$24 for each late or missing report, or \$490 if the employer and employee have conspired to withhold the correct information.

EDD may use the information to administer the Unemployment Insurance Code, as well as employment security and workers' comp programs; to locate persons (not only noncustodial parents) for the purpose of establishing, enforcing, and modifying child-support orders, as well as determining paternity; to provide information to the Franchise Tax Board for tax enforcement purposes; and to verify eligibility for federal public assistance programs.

Beginning January 1, 2001, Unemp Ins C §1088.8 (which was added by AB 196, Stats 1999, Ch 478, and amended by SB 542, Stats 1999, Ch 480) provides that for purposes of establishing, modifying, or enforcing child support, anyone doing business in the state or deriving income from California sources must make similar reports concerning non-employee service providers within 20 days after paying them a total of \$600 in one year or contracting with them for services that will cost at least \$600 in a year.

Per Fam C §17508, on a request by the Department of Child Support Services, the Franchise Tax Board, the federal Parent Locator Service, or the California Parent Locator Service (see §0.60.4 et seq.), EDD must provide access to the information it has collected per Division 1 of the Unemployment Insurance Code (which includes Unemp Ins C §§1088.5 and 1088.8). As amended by SB 240 (Stats 1999, Ch 652) Fam C §17508(b) provides that, to the extent possible, EDD must share the information collected under Unemp. Ins. C §1088.5 immediately after receiving it.

#### lottery intercepts

Per CCP §§708.710-708.795 [collection from amounts owed by state to judgment debtor], a judgment for past-due support, in both welfare and nonwelfare cases, is enforceable as a lien against the obligor's lottery winnings. CCP §708.730 [intercepting tax refunds to collect support arrears] specifically permits the enforcement of a support judgment against any money owed to a support-debtor by a state agency, including the lottery commission. This section is effective until December 31, 2000. CCP §708.740 [procedure for intercepting tax refunds through DA's office] includes



lottery winnings and allows the judgment creditor in nonwelfare cases to ask the DA to file a claim.

### Earnings Assignment

The Family Support Act of 1988 (PL 100-485, 1988 CFLR 3876) provides that in AFDC cases and cases enforced by a district attorney (Title IV-D cases), a child-support order initiated or modified on or after November 1, 1990, must provide for immediate wage withholding, whether or not arrearages have accrued. In cases that do not involve AFDC payments, however, the Act does not require withholding where (1) the court (or an administrative process) finds good cause not to require immediate withholding or (2) a written agreement between the parties provides for an alternative arrangement. The Act is codified in California at Fam C §5200 et seq., which applies to both welfare cases and nonwelfare cases.

### Earnings Withholding

An earnings-withholding order may be obtained to enforce any order for the payment of money, including awards of attorneys' fees and cash payments to be made as part of the property settlement. A special type of earnings withholding order known as a "withholding order for support" is used to collect child and spousal support. CCP §706.030(a). In addition, the Family Code permits a support obligee to obtain a wage assignment to collect child, spousal and family support. Fam C §5200 et seq. FC §7641 [enforcement of paternity/child-support judgment] specifies that all enforcement remedies apply, "including imprisonment for contempt." Fam Code §4722(b) provides that for child support due on or after January 1, 1992, any support installment that remains unpaid for more than 30 days after the filing and service of a delinquency notice incurs a penalty of up to 6% of the delinquent payment for each month that it remains unpaid, up to a maximum of 72% of the original arrearage

### writ of execution

A writ of execution is a legal process issued by a court that entitles the judgment creditor to seize the property of the judgment debtor and to satisfy the judgment from the property seized. Writs are generally enforceable for 10

years from entry of judgment (CCP §683.020). Effective July 21, 1992, statutory changes were made to resolve conflicts in procedures and duration between writs of execution and earnings withholding orders. Per CCP §706.033, if a writ is returned before the termination of an earnings-withholding order, the levying officer must make a supplemental return when it finally does terminate that must include the same information as an original return. CCP §699.560(d) [return of writ of execution] provides that if a writ of execution is received while an earnings withholding order is in effect, the levying officer must return the writ as provided in CCP §699.560(a) [writ must be returned at the earliest of (1) two years from issuance, (2) after duties under writ performed, (3) on written request of judgment creditor, or (4) 180 days after writ issued if no levy].

#### security bond requests

Fam C §4600 et seq. provide "an extraordinary remedy for cases of bad faith failure to pay child support obligations." Per Fam C §4610(a), upon a recipient's or a DA's petition and after notice and opportunity for hearing (an ex-parte TRO is available per Fam C §4610(b)), the trial court must order a payor whose child support payments are 60 days in arrears to deposit with the DA, or another appointed trustee, assets or cash equal in value to one year of support payments or \$6,000, whichever is less, as security for future support payments. (In lieu of depositing assets or money, the payor could, with court approval, provide a performance bond.)

The payor must rebut the presumptions that the 60-day arrearage was "willful" and "without good faith," and that the obligor "had the ability to pay the support." Fam C §4611.

The court must make an order to provide security for future support payments if the payor is 60 days in arrears and the trial court determines that at least one of the following conditions exists: (1) The payor is not receiving salary or wages subject to an assignment per Fam C §5200 et seq., but there is reason to believe that the obligor has earned income from some form of employment; (2) a wage assignment would not be sufficient to meet the payor's obligation; or (3) the payor's job history shows that an

assignment would be difficult or impractical to enforce. Fam C §4613.

If the obligor fails to comply with a court-approved payment plan or fails to make reasonable efforts to clear the arrearage within the time set by the court, the designated trustee must give the obligor at least 20 days' notice (by personal service) of the trustee's intent to use the money or to sell the deposited asset to satisfy the court-ordered child support. Fam C §4616. The trustee must return all assets deposited per Fam C §4610 et seq. after one year has passed since the court issued its asset-deposit order as long as the obligor has made timely support payments during that year. Fam C §4640.

Under the provisions of the Child Support Security Act, every child-support order entered in a disso or paternity case may include a requirement that the obligor deposit, as security for child support, an amount equivalent to one year's payments (or less, if the obligation will end within one year) in an interest-bearing account at a commercial bank, savings and loan, credit union, trust company, or other institution. Fam C §4561. The statute requires the obligor to replenish the fund if any amount is used for ongoing support. Fam C §4570.

#### Reporting to credit agencies

Fam C §4701 requires the Department of Social Services (DSS) to administer a statewide automated system for reporting court-ordered child-support obligations to credit reporting agencies. The statute provides that prior to any initial reporting, the DA must try to notify the obligor, who then has 30 days to pay any arrearages or challenge the accuracy of the information (in writing). (Note that Fam C §4701 has not yet been updated to reflect legislative changes under which the DA's support-enforcement functions are being transferred to local child-support agencies)

#### Uniform Commercial Code - personal property liens

Effective January 1, 2000, AB 1671 (Stats 1999, Ch 980) added Fam C §17523, which provides for the creation of a lien against a support obligor's personal property when the local child-support agency is enforcing a support delinquency, either by operation of law for all overdue amounts (whether adjudicated or not) or when the arrearages

have been set by a court or the local agency. The lien must be perfected by filing a notice of lien with the Secretary of State and, once filed, has the same effect as a judgment lien on personal property. Fam C §17523(b).

#### disability intercept

Fam C §17518 provides for the withholding of unemployment and disability benefits to enforce overdue support orders, as authorized by CCP §704.120(d) [exemptions to enforcement of money judgments]. Per Fam C §17518(c) and (e) (as well as Unem Ins C §1255.7), the Employment Development Department (EDD) must withhold (and forward to the Department of Child Support Services) 25% of the unemployment compensation or unemployment compensation disability benefits owed to a child-support obligor who is behind in court-ordered support payments; the withheld amount may be reduced on agreement between the obligor and the local child-support agency. If disability benefits are being paid under a voluntary plan, the private payor of that plan must withhold and forward the benefits after receiving notice from EDD. Fam C §17518(d).

#### workers compensation claims

Fam C §17510 requires the Department of Child Support Services to operate a workers' compensation notification project, based on the information received under Lab C §138.5. The Division of Industrial Accidents must cooperate in child-support enforcement by providing information regarding persons who receive disability benefits or have filed workers' comp claims.

#### Enforcement of support against PERS benefits

Fam C §17528 provides that within 18 months of the implementation and certification of the California Child Support Automation System (see §0.64.0.1), the Department of Child Support Services (DCSS) must create a file of all support judgments being enforced by local child-support agencies that are overdue by 60 days or by an amount equal to 60 days of support. The file must contain the payor's name and social security number, the amount of overdue support, the enforcing county, and any other information

that the Public Employees' Retirement System (PERS) deems necessary. DCSS must provide the files to PERS (updated at least monthly), and DCSS and PERS must work together to match names in the files to recipients of PERS benefits so that the benefits may be intercepted to pay support arrearages. The information in the files may be used only for purposes of child-support enforcement. Fam C §17528(a).

Fam C §17528(b) requires PERS to withhold any benefits and refunds payable to a member who has overdue support obligations; if benefits are paid periodically, the amount withheld from each payment may not exceed the withholding amount allowable under an earnings-withholding order for support.

#### state license match

Suspension or denial of licenses for noncompliance with support orders being enforced under Title IV-D Fam C §17520 and B&P C §§29.5, 30, and 31 provide a procedure to deny or suspend the business certification or license of an obligor if he or she fails to comply with a support order that is being enforced by a local child-support agency under Title IV-D of the Social Security Act (42 USC 651 et seq.). Private attorneys cannot use the procedure against recalcitrant obligors; instead, they must refer the obligee to the local child-support agency to seek enforcement. B&P C §6143.5 applies the provisions of W&I C §11350.6 to any active or inactive State Bar member who fails to pay child support after it is due. (Note that B&P C §6143.5 has not yet been updated to reflect the legislative changes that repealed W&I C §11350.6 and replaced it with Fam C §17520; see §0.64.1.) Fam C §17520 also includes, in the license-suspension statutes, drivers' licenses, notary public appointments or commissions, and commercial fishing and recreational licenses.

#### IRS intercepts

IRC §6402(c) requires the Internal Revenue Service to withhold all or part of any tax refund owed to a parent who is behind in making support payments. Under the Project Intercept plan, a state agency that has been assigned to collect either child support or combined child and spousal support for which payments are in arrears can ask the IRS to determine whether the service owes the obligor a refund and, if it does, to pay the state agency the amount of the support that is owed out of the refund. The IRS can apply

any remaining amount to either a cash refund or to a future tax liability (as indicated on the obligor's return), and it must inform the obligor of the amount it paid to the state. Treas Reg §301.6402-5(e); see 1981 AFLTR 1403, 1982 AFLTR 1576.

### Real Property liens

A creditor may record an abstract, an interstate lien form, or a certified copy of a judgment with the county recorder's office in order to place a 10-year lien on any real property that an obligor may own within that county that is not exempt from execution. CCP §§697.310, 697.320. CCP §697.320(b) states that a judgment lien on real property created by recording a child-, spousal- or family-support judgment or an interstate lien form continues during the judgment's entire enforceability period unless it is released. Be sure to spell the obligor's name correctly. See *Orr v. Byers* (1988) 198 CA3d 666, 244 CR 13, 1988 CFLR 3612 (CA-4, Div 3, Sonenshine; rev den) [judgment abstract containing misspelled name of obligor does not impart constructive notice of its contents per doctrine of *idem sonans*].

Remember that an abstract of judgment must contain the obligor's social security number and driver's license number, if the creditor knows them (see §0.83.1). In *Keele v. Reich* (1985) 169 CA3d 1129, 215 CR 756, 1985 CFLR 2893, FIRST ALERT #F-85-181 (CA-2, Div 6, Stone; rev den), the Second District held that an abstract did not substantially comply with the statute because it did not include the obligor's social security number, even though the number did appear on an exhibit attached to the defendant's original complaint. Noting that the statutory compliance must be addressed on a case-by-case basis, the court left open the issue of whether a creditor must include an obligor's identifying numbers.

Recording a certified copy of an order that makes child-support payments payable to the district attorney may create a valid lien against property owned by the obligor and his present spouse. In *re Marriage of Orchard* (1990) 224 CA3d 155, 273 CR 499, 1990 CFLR 4506, FIRST ALERT #F-90-448 (CA-1, Div 5, King; rev den). Under CCP §697.320, the First District found that a certified copy of a judgment that was recorded along with the DA's support order created a valid lien on a second wife's property because the district attorney's order made specific

reference to the judgment and the judgment was immediately accessible to anyone who required notice of a lien. The panel stated that the trial court's finding that the parcel of land was community property rather than the second wife's separate property was supported by evidence that Dad and his new spouse had executed a grant deed, a promissory note and a deed of trust in their joint names and had used community funds to purchase the property.

#### Charging Order

Under Corp C §15673, a court may make a charging order against the interest of general or limited partners even though the obligation does not arise out of partnership activities. This remedy may be used to enforce support obligations owing by a general or limited partner. *Baum v. Baum* (1959) 51 C2d 610, 335 P2d 481; *Carmichael v. Carmichael* (1963) 216 CA2d 674, 31 CR 514. (1) The court may charge the interest of the partner who owes the support payments for the amount of judgment owing plus interest. (2) The court may appoint a receiver of the partner's share of profits or any other money due to the partner. (3)

The receiver may be given the power to sell the defaulting partner's interest if necessary to satisfy the judgment. The motion for the charging and supporting declaration must be served on all partners as well as the defaulting payor. CCP §§1010 and 1011.

FTB intercepts

UIB intercepts

passport denial

bank levies

lis pendens

receivers

till taps

automatic withdrawal

injunctions

restraining orders

health insurance assignment

federal match system

- Black Lung cases
- passport
- railroad retirement

other administrative levies?

Judicial

Contempt of court

- Penal Code 270
- Penal Code 271
- Criminal Contempt under 166.4a
- Civil Contempt of court

Order for Appearance of Judgment Debtor

judicial sales

claims in probate court

bankruptcy claims

Charging Orders

Other jurisdiction's ideas:

- boot on the car
- lien registry
- registry for assignments of causes of action
- Cal Kids - Health Insurance Pilot program
- revocation of city permits (different from licenses)



Amnesty

Enforcement tools for cases where  
both arrears and child support are due:

Recommendations